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FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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28 OCT 1993

IN REPLY REFER TO:

Honorable Carol Moseley-Braun
United States Senate
708 Hart Senate Office Building
Washington, D.C. 20510

93-253

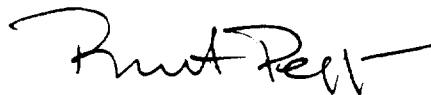
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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Dear Senator Moseley-Braun:

This in reply to your letter of September 24, 1993, on behalf of your constituent Peter Layton. Mr. Layton is concerned about the impact of the competitive bidding provisions of the Omnibus Budget Reconciliation Act of 1993 (Budget Act) on small businesses. Your letter was referred to me because the Office of Plans and Policy is responsible for implementing the competitive bidding provisions of the Budget Act for the Commission.

On October 12, 1993, the Commission released a Notice of Proposed Rule Making, PP Docket No. 93-253 (Auction NPRM), to implement the provisions of the Budget Act concerning competitive bidding. According to the Budget Act, the Commission must ensure the economic opportunity of small businesses, rural telephone companies, and businesses owned by women and minorities. To meet this Congressional mandate, the Auction NPRM proposed a variety of financial incentives for the designated entities. Specifically, we proposed to offer the designated entities the equivalent of government financing for payment of their bids for services subject to competitive bidding *i.e.*, installment payments with interest. We also asked for comment on the use of tax certificates. In the case of broadband PCS, the Commission also proposed to set-aside two blocks of spectrum in each market, one of 20 MHz and one of 10 MHz, for bidding by the designated entities. In this manner, the designated entities would only compete with one another for broadband PCS rather than against larger entities with easier access to capital. As we consider the comments filed in the competitive bidding proceeding, I can assure you that we will keep in mind our mandate to ensure economic opportunity for the designated entities, including small businesses, as required by the Budget Act.

Sincerely,



Robert Pepper
Chief
Office of Plans and Policy

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2 copies

CAROL MOSELEY-BRAUN
ILLINOIS

COMMITTEES:
BANKING, HOUSING, AND
URBAN AFFAIRS
JUDICIARY
SMALL BUSINESS

United States Senate

WASHINGTON, DC 20510-1303

CHICAGO, ILLINOIS OFFICE

Kluczynski Federal Building
Suite 3996
230 South Dearborn Street
Chicago, IL 60604-1690

September 24, 1993

Ms. Linda Townsend Solheim
Director, Legislative Affairs
Federal Communications Commission
Room 808
1919 M Street, N.W.
Washington, D.C. 20554

Dear Ms. Solheim:

I am enclosing a copy of an inquiry that I received from Peter Layton.

Because this office's desire to be responsive to all communications, your consideration of the attached is requested.

Your findings and views will be appreciated, and I will pass them on to Mr. Layton.

Please Respond To:

Andre Brady
Constituent Assistant
Carol Moseley-Braun, U.S.S.
230 South Dearborn Street
Chicago, IL 60604

Yours truly,



Carol Moseley-Braun
United States Senator

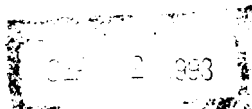
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enclosure

CHICAGO
NEW YORK
LONDON
FRANKFURT



August 30, 1993



Senator Carol Mosely-Braun
230 S. Dearborn, Suite 3996
Chicago, IL 60604

Dear Senator Mosely-Braun:

Thank you for your response to my letter of May 24, 1993 regarding my inquiry concerning the auction of radio frequencies. Although you stated my inquiry would receive prompt attention, no answers or information has come from your office, or the FCC.

As you may remember, I am a General Partner in a Chicago-based firm that employs approximately 120 people. We trade financial derivative products and are very dependent upon Spread-Spectrum technology operating on what are currently public airwaves.

As you must also be aware, there is at least one bill being called for vote to make more bandwidth available. I have enclosed a copy of a news service printout that describes the state of the legislation as of June 1993.

I once again ask for your assistance in this matter so that my firm is not placed at a competitive disadvantage to firms having greater resources or better political connections. Such firms might be able to "lock-up" frequencies without participation from all interested parties. Simply put, Hull Trading does not have the resources of Motorola or Apple, though we also desire to purchase or license frequency space on a limited basis.

Thank you for your personal attention in this matter. I am sure that small businesses throughout Illinois are interested in any information you can provide.

Sincerely,

Peter J. Layton
General Partner

enclosure
PJL/suz

cc: Laura Belzin, FCC

Citation: Telecommunications Alert, June 16, 1993 v10 i116

Coverage: Telecommunications (TL)

Publisher: United Communications Group

Subscription: \$218 per year as of 1/92. Published daily. Contact United Communications Group, 11300 Rockville Pike, Suite 1100, Rockville, MD 20852-3030. Phone (301) 816-8950. FAX (301) 816-8945.

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Title: SENATE PANEL APPROVES SPECTRUM AUCTIONING LEGISLATION

The Senate Commerce Committee approved a bill allowing the federal government for the first time to auction radio spectrum.

The committee also adopted an amendment allowing states with cellular regulations in place as of June 1 to petition the FCC to continue regulating cellular carriers. The Senate bill originally would have allowed the FCC to preempt all state regulation of cellular carriers.

The Senate Commerce Committee adopted the amendment after state regulators, consumer groups and cellular resellers spoke out against federal preemption of state regulation. -- CCMi News Bureau

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Citation: Advanced Wireless Communications, June 9, 1993 v4 i12

Coverage: Telecommunications (TL)

Publisher: Telecom Publishing Group

Subscription: \$446 per year as of 1/92. Published biweekly. Contact Telecom Publishing Group, 1101 King St., Suite 444, Alexandria, VA 22314. Phone (703) 683-4100. FAX (703) 739-6490.

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Title: SPECTRUM AUCTION VOTE DEADLINE NEARS

The scope of a Senate bill to reallocate 200 megaHertz of federal radio spectrum to new services and pre-empt state rate regulation of cellular and other wireless phone services is still unclear as a mid-June deadline nears.

However, that should change this week because the Senate is scheduled to take up its budget reconciliation bill. The spectrum auction bill, considered part of the larger legislation, should be part of the budget discussion.

The Senate has set a June 18 deadline to pass the budget bill. The House narrowly approved its version of the budget last month.

One possible scenario is the language of the auction bill could change when

buy the airwaves, as it bought Alaska. But who else owns them if not the public? The Martians? General Motors? Given that it is necessary for somebody to monopolise each frequency (or there would be static for all)--just as only one house can occupy each house-sized plot of land--the government has to do the allocation on behalf of the public.

Auctioning licences would not prevent new services getting on to the air. Quite the reverse. Apple Computer wants to make a wireless computer that would need no telephone line to talk to others; it will need a part of the spectrum. Let it buy it rather than wait to be allocated it. Perhaps it could not afford a band: then demand is probably not as great as for another user. Perhaps a dominant competitor would outbid it, merely to keep it off the air: let the normal anti trust laws have full play. Perhaps it could get by with only part of a band: good, let it sell the rest. A market in airwave-space will encourage users to be sparing in their use of the spectrum by compressing their signals as much as technology allows.

Don't listen to the lobbies

To decide between the many new uses of the radio spectrum by fiat, rather than price, is to bow to political lobbying power, rather than public demand. True, auctions might drive some worthy users off the air altogether. But if the government wants to stop ham radio operators being driven off the air by yuppies wielding digital walkie-talkies, then let it reserve a small band for radio hams, or any other deserving broadcaster. Planning (zoning) laws work for land; why not for airwaves?

Governments are supposed to protect the public interest by ensuring that local broadcasters are not ousted by national ones, and by seeing that broadcasting services remain diverse and universally available. Otherwise, a monopolist Carnegie or a villainous Blofeld might buy all the spectrum for his own self-aggrandisement. Again, anti trust and planning laws could quash such monopolies even after licences had been sold. Other public-service duties of broadcasters (carrying news, for example) could equally be written into the licences that they bid for. What greater public service is there than giving the public its money's worth?

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Citation: The Economist, June 8, 1991 v319 n7710 p18(1)

Title: Free as air; governments defraud taxpayers when they give away
radio frequency bands. (editorial)

Subjects: Radio stations_Licenses
Telecommunication policy_Planning

Reference #: A10845283

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Full Text COPYRIGHT Economist Newspaper Ltd. (UK) 1991

THE American public owns about half the land in America. If the government were to give that land to businesses, it would be defrauding taxpayers of its sale value. If it also insisted that the land be used only for, say, cattle ranching, it would prevent the growth of everything from theme parks to nature reserves. Yet Congress wants to do something analogously absurd with America's airwaves.

At present, the government decides who will get a licence to use parts of the radio spectrum, and it reserves chunks for television, satellites, cellular telephones, digital radio and the like. It used to grant licences by "comparative hearings" in which would-be licence holders tried to convince the Federal Communications Commission of their deservingness. But so many companies came forward with plans to run cellular-telephone franchises that in 1982 the system was changed to a simple lottery. The lottery is easier to administer, but just as unfair to the taxpayer. For the airwaves have value, and the lucky winner of the lottery can simply sell his franchise without erecting a single antenna. One Cape Cod company recently sold its franchise, acquired free ten months earlier, for \$41.5m.

This practice dates from the 1950s, when the broadcasters lobbied the government into letting them trade their licences, thus establishing that licences are valuable property. It is therefore the height of hypocrisy for the same industry to argue, as it is now doing, that the government has no right to sell new licences to the highest bidder. The Commerce Department has been blocking the release of 200 megahertz of bandwidth now used by the government until Congress agrees to let it auction those frequencies. That 200 megahertz is worth \$10 billion. A House committee, in the pockets of a lobby whose motto is "pull up the ladder once aboard", has voted for its release without auction, and so may the Senate. Similar debates are brewing in many other countries, heated by the proliferation of new uses to which radio waves can be put.

Three arguments are raised against auctions. First, the government cannot sell what it does not own; second, auctions might fend off deserving newcomers offering new services; third, they would prevent the government fulfilling its primary duty, of ensuring the airwaves are reserved for the uses that are in the public interest.

The first is easily dealt with. Certainly, the American government did not

squeeze a few extra billion dollars out of spectrum distribution, without negatively affecting the economy, auctions are appropriate," said Richard Brass, president of Oracle Data Publishing, Bellevue, Wash. Testifying before the House Subcommittee on Telecommunications and Finance, Brass tempered these fighting words, adding, "The problem with spectrum auctions is that we are only considering cash auctions. The problem with cash auctions is that there is absolutely no historical correlation between having useful ideas and having cash. In fact, it's pretty much the opposite."

Auction bills in the House and Senate are on the fast track, with votes anticipated within weeks. Subcommittee Chairman Ed Markey (D-Mass.) outlined his role in making sure users of federal lands for oil and gas leasing, and coal mining paid into the Treasury, and "I think the time has come to apply those same lessons to the FCC and the use of radio spectrum."

This may not be the correct analogy. According to Brass, spectrum can be reclaimed from a failed user if a service fails to materialize or if it is used improperly; "You can waste it, but you can't use it up...there is no need for the government to demand cash for its auction," he said. "The nation can afford to experiment with other forms of payment as well."

Brass's alternatives include allowing applicants to pledge some percentage of future earnings instead of bidding cash up front ("they will almost always total far more than a cash auction bid over time"); offering a certain amount of free service time or access for public use/benefit; allowing a lump sum to be paid sometime after the transaction; public-benefit auction-free set-aside channels; and preservation of the pioneers' preference for those "who have developed an important new technology or type of service...It is no advantage to be a pioneer if, after winning, you have to pay the same price as everyone else."

Markey appears to agree with some of Brass' suggestions, saying, "If we don't find a way of keeping small companies in the game, we all lose."

Going one step beyond pioneers' preferences, Geoff Goodfellow, chairman of RadioMail Corp. in Menlo Park, Calif. (LMRN, April 16, pp. 1-2), proposed only a minimum of nationwide licenses, with the remainder apportioned to regional, statewide, citywide and campus applications. "If we do not specify multiple levels of service before holding auctions, we could be faced with hundreds of service providers, each promoting its own favorite communications technology in its own prime coverage area," Goodfellow said. "Such auctions will, by nature, provide access to large and small companies, in each area of service. I believe the wireless data industry is now where the cellular phone industry was 10 years ago. Ten years from now, it will be where the computer industry is today."

Small Companies: Part of History, Not Part of the Future

Not all of those testifying were willing to compromise on auction rules. Even pioneers' preferences are not protection enough. "Awarding spectrum licenses by competitive bidding will not make the participation of small companies in the telecommunications industry a part of this nation's history rather than a part of its future," said R. Craig Roos, president and CEO of Personal Communications Services of New York.

Instead, Roos proposed comparative hearings for at least one license in

each market, awarding at least one license to a company that qualifies as "small" under the Small Business Administration rules. These rules count dollars spent in research and development as part of the bid price, annual fees in lieu of large bid sums, and auctioning only spectrum reallocated from government to commercial use.

Representing Telocator, Bill DeKay, executive vice president of Dial Page in Greenville, S.C., agreed with Roos, saying, "We think that it is neither fair nor good policy that medium and small carriers who built this industry...should have a diminished opportunity to obtain licenses for advanced technologies and future opportunities in wireless services. It is precisely this outcome which we fear will inevitably result from spectrum auctions." DeKay cited foreign experience with auctions that actually lengthened, not shortened, the licensing process; if this happened domestically, "a delay of only three years would result in 14 million fewer subscribers" than those anticipated for new services in 2002.

Telocator suggested three alternatives to auction--strict financial qualification criteria, as-high-as-legally-possible non-refundable application fees and a ban on pre-lottery settlements.

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